UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DENVER, CO 80204-3582

REGION VIII

ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

September 25, 2024

Debra Weigal
Principal
Desert View Academy
By email only to [redacted content]

Re: OCR Complaint Number 08-24-1056
Desert View Academy

Dear Debra Weigal:

On October 25, 2023, the United States Department of Education (the Department), Office for Civil Rights (OCR) received a complaint against Desert View Academy (the Academy). The Complainant alleges that the Academy discriminated against him and his daughter (the Student) on the basis of race and disability [redacted content]. Specifically, the Complainant alleges that the Academy:

1. Discriminated against the Student on the basis of race when the Student's teacher accused the Student of [redacted content];
2. Discriminated against the Student on the basis of race when the Principal [redacted content];
3. Discriminated against the Complainant on the basis of disability by [redacted content].

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d et seq., and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of federal financial assistance from the Department. OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Because the Academy receives federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504, Title II and Title VI.

After carefully reviewing the information provided, OCR determined that there is insufficient evidence to support the allegations. OCR explains its decision in further detail below.

Legal Standards

Under the Title VI regulations at 34 C.F.R. §100.3(a) and (b), a school district may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. Section (b)(1) states that a school district may not, directly or through contractual or other arrangements, on the basis of race, color or national origin, deny an individual any service, financial aid or other benefit; provide an individual any service, financial aid or other benefit that is different, or is provided in a different manner, from that provided to others; subject an individual to segregation or separate treatment in the receipt of any service, financial aid, or other benefit; or restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit.

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under 34 C.F.R. §104.4(b)(1) and 28 C.F.R. §35.130(b)(1) a recipient public school district may not, directly or through contractual, licensing, or other arrangements, on the basis of disability; deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service; afford a qualified disabled individual an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others; provide a qualified disabled individual with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; or limit a qualified disabled individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Facts

[redacted content]

Analysis

[redacted content]

Compliance Concerns

During the course of OCR's investigation, OCR reviewed information regarding the Academy's policies and procedures that raise potential compliance concerns.

The Section 504 regulation, at 34 C.F.R. §104.8(a) and (b), requires a recipient employing 15 or more persons to take appropriate and continuing steps to notify program participants, beneficiaries, applicants, employees, and unions or professional organizations that it does not discriminate on the basis of disability. The notification must also identify the responsible employee designated under 34 C.F.R. §104.7(a) to coordinate its efforts to comply with the regulations. The Title II regulation, at 28 C.F.R. §35.106, similarly requires a public entity to inform applicants, participants, beneficiaries, and other interested persons about the protections against disability discrimination assured by Title II and the regulations. Under 28 C.F.R.

§35.107(a), public entities employing 50 or more persons must also notify all interested individuals of the name, address, and telephone number of the designated Title II compliance coordinator.

The Section 504 regulations, at 34 C.F.R. §104.7(b), require a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulations, at 28 C.F.R. §35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish prompt and equitable grievance procedures.

OCR requested that the Academy provide a copy of its notice of non-discrimination. The Academy provided Policy 2.02, Equal Employment Opportunity. This policy does include a statement of non-discrimination. However, the statement is specific to employment and is not sufficient to provide notice to program participants, beneficiaries, or others identified in the regulation that it does not discriminate on the basis of disability. The policy also does not identify the responsible employee to coordinate its efforts to comply with the Section 504 and Title II regulations (i.e., Section 504 coordinator).

OCR also requested a copy of the Academy's procedures for filing a complaint of discrimination. In response, the Academy provided a copy of its Discrimination Grievance Procedure. OCR located a substantially similar document posted on the Academy's website, Section 504/Americans with Disabilities Act Grievance Procedure. Although both policies are generally consistent with the Section 504 and Title II regulations, they specify that grievance must be filed with either the Title IX Coordinator or the Section 504 Coordinator, without identifying who those individuals are. This is not sufficient to provide notice of where complaints may be filed.

The Academy expressed an interested in resolving these concerns under Section 302 of OCR's CPM, and OCR determined that it was appropriate to do so.

Conclusion

For the reasons explained above, OCR is closing Allegations 1-3 of this complaint as of the date of this letter and will take no further action. To resolve the compliance concerns identified during the course of the investigation, on September 19, 2024, the Academy voluntarily signed the enclosed Agreement, which when fully implemented, will address OCR's compliance concern. OCR will monitor the implementation of the Agreement until the Academy is in compliance with the terms of the Agreement and the statutes and regulations at issue in the case to resolve OCR' s compliance concerns identified in the investigation and discussed above. The Agreement details the specific actions the Academy will take and the dates for their implementation. When fully implemented, the Agreement will address the evidence obtained and the allegations investigated to date.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address District' s compliance with any other statutory or regulatory provision or to address any issues other than those addressed in this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. Complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the Academy must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

If you have any questions, please contact David Sumners, the OCR investigator assigned to this complaint, at 303-844-4512 or David.Sumners@ed.gov.

Sincerely,

/s/
Rebecca Tanglen
Supervisory Attorney